

Revised FDI Policy to Restrain Opportunistic Takeovers/Acquisitions of Indian Companies

*With a view to curb opportunistic takeovers/acquisitions of Indian companies due to COVID-19 pandemic, the “**Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry**” has reviewed the extant FDI policy, 2017 on 17th April, 2020 by issuing **Press Note No. 3(2020 Series)**.*

*The government has amended **para 3.1.1 of extant FDI policy** enclosed in **Consolidated FDI Policy, 2017**.*

Mandatory Government Nod for FDI

Now, let's understand this by comparing current position with the amended position;

- **Present Position**

States that,

“A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Moreover, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than

defense, space, atomic energy and sectors/activities prohibited for foreign investment.”

- ***Revised Position***

States that

3.1.1(a)

“An entity of a country, which shares land borders with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.”

Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defense, space, atomic energy and sectors/activities prohibited for foreign investment.”

3.1.1(b)

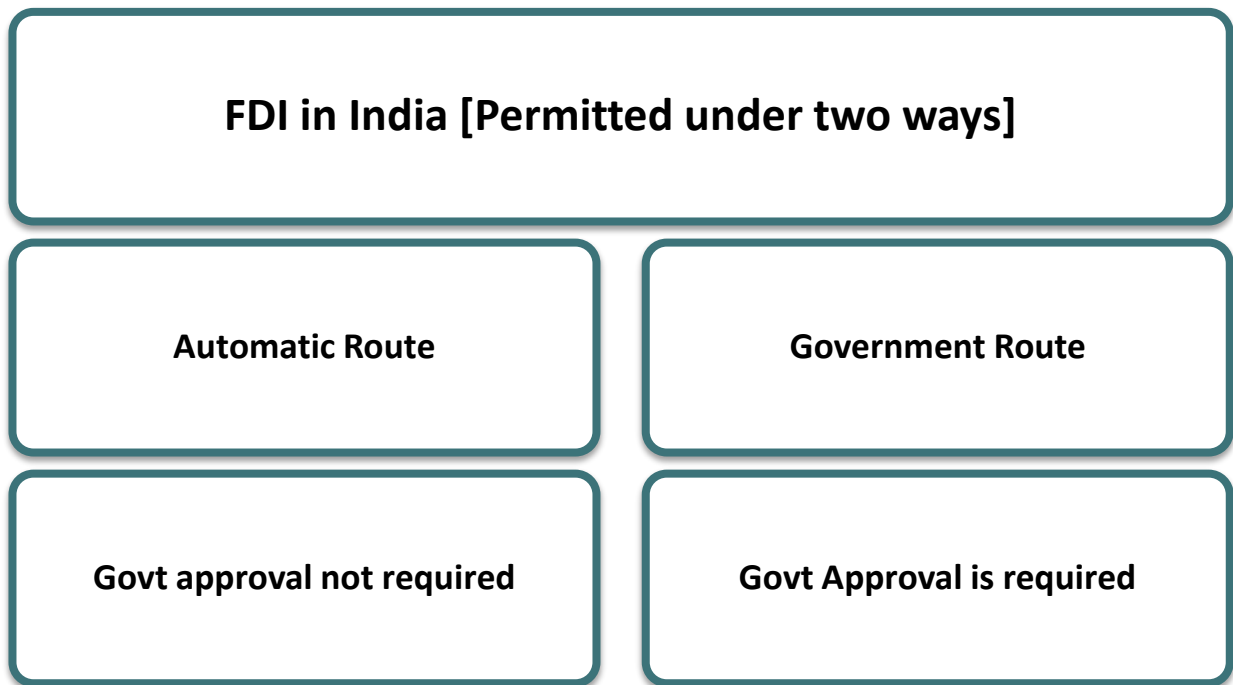
“In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such **subsequent change in beneficial ownership will also require Government approval.**”

*Note** Press note also mentioned in the end that the above decision will supposed take place from the date of **FEMA notification.**

What is the motive of the government behind this?

This ongoing COVID-19 pandemic has affected the entire world as Trade centers are locked up. While it is very important to follow social distancing guidelines in order to get back trade on the track and to avoid spread of the virus. At this point of time for taking quick measures to fight against COVID-19 India is appreciated worldwide. In India, lockdown was announced by Prime Minister Narendra Modi from 25th March, 2020 which is supposed to carry till 3rd May, 2020. On the other hand, with countrywide lockdown there comes its own distress. Therefore to keep up with the situation government is continuously revising rules and regulations to make it easier for all citizens & companies.

The main motive of the government is to mandate prior government permission for making investment in India by countries which shares land border.



*Also the revised position states that permission of the government is obligatory for each type of FDI - **green field or brown field** – likewise subsequent change in beneficial ownership will necessitate prior government approval.*

Our Opinion

It has been seen that India is an attractive destination for investors for making investment in different sectors. Therefore, we may face massive consequences on the trade relations with other countries. This decision of revising FDI policy might also affect trade initiatives taken by the government.